

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB JAN. 7, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re MGA Industries, Inc.

---

Serial No. 75/266,770

---

Gunther J. Evamna of Price, Heneveld, Cooper, Dewitt and  
Litton for MGA Industries, Inc.

Cindy B. Greenbaum, Trademark Examining Attorney, Law  
Office 104 (Sidney Moskowitz, Managing Attorney).

---

Before Seeherman, Quinn and Hairston, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

This is an appeal from the Trademark Examining  
Attorney's final refusal to register the mark CABLE LIGHTS  
(LIGHTS is disclaimed) for "decorative lighting, namely  
electrical conductors electrically connecting a series of

miniature bulbs, the electrical conductors and bulbs being completely encased in an extruded flexible plastic sheath."<sup>1</sup>

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark is merely descriptive of applicant's goods.

Applicant and the Examining Attorney have filed briefs<sup>2</sup>, but an oral hearing was not requested.

In support of her refusal to register, the Examining Attorney submitted an entry from Webster's II New Riverside University Dictionary (1988), wherein "cable" is defined, in relevant part, as:

1. a. A strong, large-diameter heavy steel or fiber rope; b. Something resembling a cable
2. *Elect.* A bound or sheathed group of mutually insulated conductors

It is the Examining Attorney's position that applicant's mark CABLE LIGHTS "describes a significant characteristic or feature of applicant's goods, namely, that the goods comprise decorative lights that utilize a cable." (Office Action, June 16, 1998).

---

<sup>1</sup> Application Serial No. 75/266,770 filed March 31, 1997; alleging dates of first use of October 17, 1996.

<sup>2</sup> We note that applicant, for the first time with its reply brief, submitted several exhibits. This evidence is untimely as provided by Trademark Rule 2.142(d) and, thus, has not been considered.

Applicant, in urging reversal of the refusal to register, contends that the mark is not merely descriptive of its goods because the goods do not include a cable and

cannot be used as a cable. Applicant maintains that:

...the word "cable," as used in an electrical sense, normally refers to a device consisting essentially of only a sheathed group of mutually insulated conductors, such as a telephone cable, a power transmission cable, or the like. The word "cable" is not used to designate a device which includes elements which consume a substantial amount of electrical power such as light bulbs. Further, electrical cables are used solely for transmission of electrical current, not as a means for achieving decorative lighting. (Emphasis in original) (Brief, pp. 3-4).

Also, applicant maintains that the term CABLE LIGHTS is not being used by others in the trade to describe this type of decorative lighting. Applicant states that its competitors use such terms as "electric rope lights," "running lights," and "flexible display light" as the names of their products.

At the outset, we should point out that the issue before us is not whether CABLE LIGHTS is the generic name for applicant's type of decorative lighting. Indeed, it appears from this record that "cable lights" is the generic name for a type of lighting which is different from applicant's decorative lighting, i.e., lighting fixtures which are suspended from a cable.<sup>3</sup>

---

<sup>3</sup> In connection with a Section 2(d) refusal which was subsequently withdrawn by the Examining Attorney, applicant submitted a product brochure for a brand of lighting fixtures which are suspended from a cable.

The issue in this case, however, is whether CABLE LIGHTS is merely descriptive of applicant's "decorative lighting, namely electrical conductors electrically connecting a series of miniature bulbs, the electrical conductors and bulbs being completely encased in an extruded flexible sheath." Reproduced below is a picture of applicant's goods taken from a product brochure.

A mark is considered to be merely descriptive within the provisions of Section 2(e)(1) if it immediately describes an ingredient, quality, characteristic or feature of the goods or if it directly conveys information regarding their nature, function, purpose or use. See In

re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

After careful consideration of the record herein, we find that CABLE LIGHTS immediately describes a significant feature or characteristic of applicant's goods, namely that the lighting is in the form of a cable.

We recognize that, technically speaking, applicant's goods do not include a cable. However, it is unlikely that ordinary consumers are aware of the technical definition of a "cable." It is well established that in determining the issue of mere descriptiveness, we must take into account the impact the mark is likely to make on the average purchaser of the identified goods or services. In re Recovery, Inc., 196 USPQ 830 (TTAB 1977). When applicant's mark CABLE LIGHTS is considered in connection with the identified goods, we believe that ordinary consumers would understand it to mean lighting in the form of or resembling a cable. Thus, the term CABLE LIGHTS is merely descriptive of applicant's goods.

**Decision:** The refusal to register under Section  
2(e)(1) is affirmed.

E. J. Seeherman

T. J. Quinn

P. T. Hairston  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

Ser No. 75/266,770